

### **REMARKS**

Claims 1-42 are pending. Reconsideration of the application is requested in view of the remarks which follow.

#### **Claim Rejections under 35 USC §102(e)**

Claims 1-42 stand rejected under 35 USC §102(e) over Osenar et al. (US 7,306,864).

Claims 1-42 stand further rejected under 35 USC §102(e) over Osenar et al. (WO 03/092096).

The Office Action expressly acknowledges that both of the applied Osenar references have a common inventor with the present application and that there is an opportunity to overcome each of the rejections by a showing that any invention disclosed but not claimed in the applied reference(s) was derived from the inventor(s) of this application and thus is not an invention "by another" (Office Action at pages 2-3).

Accordingly, without acquiescing to the grounds for the rejection, but rather to expedite allowance of the application, Applicant confirms that the present application and the applied references have three common inventors, Paul Osenar, Paul Sabin and Mohammad Enayetullah. These three common inventors have duly executed a Declaration under Rule 1.132 (filed concurrently herewith) in order to attest to the fact that if, and to the extent that any of the subject matter claimed in the instant application was disclosed but not claimed in either or both of the '864 Patent and the '096 Application, that subject matter was invented by those three common inventors. The three declarants also confirm that the instantly claimed invention (as recited in present claims 1-42) was not invented by Richard Formato, an inventor or co-inventor of one or more claims of the '864 Patent and the '096 Application. As such, the '864 Patent and the '096 Application are not the work "of another" relative to the present application. Lastly, the declarants

acknowledge that Peter Rezac is an inventor of one or more of the claims in the instant case, but confirm that Mr. Rezac was not an inventor of one or more claims of '864 Patent and the '096 Application.

Once again, without acquiescing to the grounds for the rejections, they are nonetheless believed to be overcome in any case with today's Declaration. It is therefore respectfully requested that the rejections be withdrawn.

In view of the foregoing, Applicant believes the pending application is in condition for allowance.

### **FEE AUTHORIZATION**

The Director is hereby authorized to charge the surcharge amount and any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 58399(47171).

Dated: December 23, 2008

Respectfully submitted,

Customer No. 21874

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